

**LEWIS
AND
ROCA**
LLP
LAWYERS

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3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹

USA SECURITIES, LLC,²

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**USACM TRUST'S SUPPLEMENTAL
BRIEF IN SUPPORT OF EIGHTH
OMNIBUS OBJECTION TO
CLAIMS ASSERTING A SECURED
STATUS AS THAT OBJECTION
PERTAINS TO THE DUTKIN
CLAIM**

Date of Hearing: February 21, 2008
Time of Hearing: 9:30 a.m.

Still pending before the Court is the USACM Liquidating Trust's (the "USACM Trust") Eighth Omnibus Objection to Claims Asserting Secured Status (the "Objection") [DE 3147] as that Objection relates to Proof of Claim No. 10725-01395 filed by John Dutkin ("Dutkin Claim") and the USACM Trust's Motion for Summary Judgment on that

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

Objection (the “Motion”) [DE 4291]. The Court heard oral argument on the Objection and the Motion on December 20, 2007 and requested supplemental briefing on the following:

- 1) Are the funds that John Dutkin seeks to recover as part of his claim against USACM already at issue as part of the pending interpleader action;
- 2) Did the Court enter an order under which USACM could have and/or should have honored the checks written to John Dutkin that were rejected by USACM post-petition;
- 3) Is Dutkin’s claim entitled to secured status based upon a constructive trust theory, or because USACM might have been acting as a fiduciary?

A. The Underlying Facts.

Shortly before USACM filed its petition, Dutkin executed three assignments that transferred his direct lender interests to third parties. In return, he received three checks from USACM totaling \$56,120.90. Those checks bounced, however, because USACM had filed its petition by the time Dutkin deposited them. Dutkin filed Proof of Claim 10725-01395, which asserted a secured claim for \$56,120.90.

B. The Disputed Funds Are Already At Issue In the Interpleader.

The USACM Trust has determined that the \$56,120.90 in which Dutkin claims an interest is deposited in the related interpleader action (Adv. No. 06-1146). An excerpt from Exhibit C to the Status Report Re Disbursement of Funds In Interpleader Action e-filed on July 30, 2007 by USACM lists the three Dutkin assignments as “unresolved claims”:

Case: 06-01146-lbr Doc #: 139 Filed: 07/30/2007 Page: 9 of 11

USA Commercial Mortgage Investors Trust			Checks cleared account		
Wells Fargo Bank					
Outstanding Checks					
April 2006					
Payable To	Amount	Wells Fargo Date	Loan	Assignee	Account ID
PENDING:					
Casilio O. Martinez	1,351.00	4/7/2006	Beau Rivage	Mary Ann Deal	1062
John Dutkin, Trustee	\$6,120.90	4/5/2006	Brookmore	First Trust Co of onaga C/F Karen Moberly IRA	6805
Retirement Accounts Inc./C/F Judd Robbins IRA	25,000.00	4/7/2006	Del Valle Isleton	Donald Pinski	7140
John Dutkin, Trustee	25,000.00	3/27/2006	Fiesta USA Stoneridge	Howard Connell and Lorene Connell	4257
John Dutkin, Trustee	25,000.00	3/30/2006	Fiesta USA Stoneridge	Jean Jacques Berthelot Trustee of the Berthelot Living Trust dated 4-9-03	4365
Marietta S. Von Berg, Trustee	50,000.00	4/12/2006	Hasley Canyon	Pat A. Doloe and Lora Dean Doloe	6096
James Feeney Trustee	100,000.00	4/11/2006	Margate Annex	Robert L. Ogren Trustee for the benefit of the Robert L. Ogren Trust dated 6-30-92	94
				M Craig Madoff Trustee of the Madoff Family Trust dated	7793
Peter A. & Fabiola A. Bolino	100,000.00	4/13/2006	Marquis Hotel and W/ 9-1-08		
	\$ 231,120.90				

1 [Adv. No. 06-1146, DE 139, p. 3] Also, the Status Report indicates that the funds related
2 to these assignments and other claims totaling \$323,021.51 were deposited to the Court's
3 Registry Account. [*Id.*] Kathy Moore in the Clerk's Office has confirmed that the entire
4 \$323,021.51 is still deposited in the Court's Registry Account.

5 Dutkin, through his attorney George Frame, recently filed a stipulation that relates
6 to the \$6,120.90 assignment to First Trust Co. [Adv. No. 06-1167³, DE 333] and a motion
7 for summary judgment related to the other two assignments [Adv. No. 06-1167, DE 330].
8 On February 7, 2008, USACM filed a limited opposition to the motion for summary
9 judgment, asserting only that the Court should order that the disputed funds be paid from
10 the Registry Account and not by the Debtor. [Adv. No. 1167, DE 337].

11 Dutkin does not have a secured claim against USACM. If Dutkin prevails in the
12 interpleader action, he will receive the disputed funds from the Registry Account and will
13 have no claim against USACM. If the assignees prevail in the interpleader action, Dutkin
14 will receive the return of his direct lender interests. In that case, he may have a general
15 unsecured claim depending upon how the loans in which he is invested perform.

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25 ³ Adv. No. 06-1167 and Adv. No. 06-1146 were consolidated by order dated September
26 22, 2006 [Adv. No. 06-1146, DE 30]. According to the Clerk's Office, the Registry
Account relates to 06-1146.



1 The Court should sustain the Objection and grant the Motion as they pertain to the
2 Dutkin Claim.

3 Dated: February 8, 2008.

4 LEWIS AND ROCA LLP

5
6 By /s/ Rob Charles (#6593)

Susan M. Freeman, AZ 4199 (*pro hac vice*)

7 Rob Charles, NV 6593

John C. Hinderaker, AZ 18024 (*pro hac vice*)

8 3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

9 Telephone: (702) 949-8200

10 Facsimile: (702) 949-8398

E-mail: rcharles@lrlaw.com

Attorneys for the USACM Liquidating Trust

11 Copy of the foregoing mailed by first class
12 postage prepaid U.S. mail
on February 8, 2008 to:

13 George D. Frame, Esq.
14 Geroge D. Frame LTD.
601 Greenway Road, Suite D
15 Henderson, NV 89002

16 /s/ Renee L. Creswell
Renee L. Creswell